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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/660,975	Applicant(s) HAMILTON ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49, 51-58, 60 and 61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49, 51-58, 60 and 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 27 December 2005 have been fully considered but they are not persuasive.

In response to the applicant's argument that Roe fails to disclose a material that is free-flowing, it is noted that Roe discloses in column 19, lines 27-45, individual particles that fulfill the description of free-flowing particles since they are loose, granular materials.

In response to the applicant's argument that Roe fails to disclose cellulosic nits, it is noted that "nits" are generally described but not clearly defined in the instant specification. The "bundles of fibers" disclosed by Roe fulfill the claimed limitation of "nits" since a bundle of fibers comprises generally particulate matter comprising entangled fibers.

In response to the applicant's argument that Roe fails to disclose a nit conditioner, it is noted that the instant specification described a lubricant as a type of nit conditioner. Since a lotion acts as a lubricant, the lotion disclosed by Roe fulfills the claimed limitation of nit conditioner. Further, it is noted that Roe discloses in column 19, lines 43-45, the lotion being included with the particles, and therefore the lotion will be used on the particles, or nits, disclosed by Roe.

In response to the applicant's argument that Roe fails to disclose a wicking barrier, it is noted that Roe discloses in column 19, lines 56-59, a scrim or web separating the nits from other portions of the article. A scrim or web is liquid permeable

and provides a physical barrier between the nits and other portions of the article.

Therefore, the scrim or web of Roe fulfills the claimed limitation of a wicking barrier.

In response to the applicant's argument that the angle of repose is relative to the horizontal plane formed by the sides of a pile of free flowing particles, it is noted that any angle, as described in the Action, is defined relative to the horizontal plane.

In response to the applicant's argument that Roe fails to disclose particles of 0.5 mm, it is noted that Roe discloses that the particles may be as small as 0.5 mm and smaller. Roe does not disclose that these particles are in combination with particles of larger size, and therefore it is within the scope of Roe's disclosure that all particles are 0.5 mm and smaller.

In response to the applicant's argument that Roe fails to disclose polymeric beads, it is noted that cellulose is a polymeric material.

In response to the applicant's argument that Roe fails to disclose at least 30% nits and no more than 30% mineral matter, it is noted that Roe discloses 100%, or at least 30%, nits, and 0%, or less than 30%, mineral matter.

In response to the applicant's argument that Chauvette fails to disclose free-flowing cellulosic nits, it is noted that the cellulosic fibers 12 are able to move in relation to each other and therefore fulfill the claimed limitation of free-flowing cellulosic nits.

With respect to the rejection of claims 41, 43-49, and 51-59 under USC 101, it is noted that the applicant's arguments are moot in view of the new rejection below. With respect to the rejection of claim 30 under USC 101, it is noted that claim 30 is now rejected in view of claim 39 of U.S. Patent 6,667,424. With respect to the rejection of

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claims 12 and 13 under USC 101, it is noted that since all limitations of the instant claims are disclosed in the patented claim, the instant claims are not patentably distinct from the patented claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 6, 14, 16-19, 21, 24-28, 31-35, 37, and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Roe et al. (6,156,020).

With respect to claim 1, Roe discloses an absorbent article 20, as shown in figure 5, comprising a pouch 152 containing nits 172. The nits 172 are particles of cellulosic batts, as disclosed in column 19, lines 37-38. The pouch 152 further comprises a nit conditioner, as disclosed in column 19, lines 43-45.

With respect to claim 2, the nit conditioner comprises a lubricant in the form of a lotion, as disclosed in column 19, lines 43-45.

With respect to claim 6, the nit conditioner comprises hydrophobic matter in the form of a lotion, as disclosed in column 19, lines 43-45.

With respect to claim 14, the nits inherently have an angle of repose, which would fall into the range of 70 degrees or less, as the range enables angles between 70 and -290 degrees.

With respect to claims 16 and 18, the nits 172 have a particle size of 0.5 mm, as disclosed in column 19, line 1. Since 100% of the nits 172 have a particle size of 0.5 mm, the pouch is free of particles with a size greater than 0.85 mm.

With respect to claim 17, the claim discloses an article, not the method of making the article. Roe discloses an article comprising nits and a chemical additive in the form of the nit conditioner.

With respect to claim 19, the pouch 152 comprises superabsorbent particles, as disclosed in column 19, line 39.

With respect to claim 21, Roe discloses an absorbent article 20, as shown in figure 5, having a longitudinal axis 100, a transverse axis 110, two longitudinal sides 50, and a target zone 120. The article 20 comprises a liquid impervious backsheet 26 and a liquid pervious topsheet 24, as shown in figures 6 and 6a. The article 20 further comprises a pouch 152 containing free-flowing particles 172. The pouch 152 is laterally surrounded by an outer shaping member 210, as described in column 19, lines 18-20. A wicking barrier, as described in column 19, lines 56-59, separates at least a portion of the pouch 152 from the outer shaping member 210.

With respect to claim 24, the free-flowing particles 172 are beads, as disclosed in column 19, lines 64-65.

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With respect to claim 25, the free-flowing particles 172 comprise 100% by weight nits.

With respect to claim 26, the free-flowing particles 172 are free of clay.

With respect to claims 27 and 28, 100% by mass of the free-flowing particles 172 have a particle size of 500 microns, as disclosed in column 19, line 1.

With respect to claims 31-33, the pouch 152 comprises an odor control agent and enzyme, as disclosed in column 19, lines 43-45.

With respect to claims 34, the pouch 152 comprises superabsorbent particles, as disclosed in column 19, line 39.

With respect to claim 35, the free-flowing particles 172 comprise cellulosic fibers, as disclosed in column 19, lines 37-38, and a lubricant in the form of a lotion, as disclosed in column 19, lines 43-45.

With respect to claim 37, the free-flowing particles 172 comprise cellulosic fibers, as disclosed in column 19, lines 37-38, and hydrophobic matter in the form of a lotion, as disclosed in column 19, lines 43-45.

With respect to claim 39, the wicking barrier is a film, as disclosed in column 19, lines 56-59.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chauvette et al. (5,649,915).

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Chauvette discloses a pouch 20, as shown in figure 4, containing cellulosic nits 12 comprising cellulose fibers, and a nit conditioner comprising a hydrophilic debonder, as disclosed in column 6, lines 54-67.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4, 7-9, 11, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020) in view of Roe et al. (5,643,588).

Roe (-020) discloses all aspects of the claimed invention but remains silent as to the type of lotion that may be used as the nit conditioner. Roe (-588) discloses the use of a lotion in an absorbent article, the lotion comprising mineral oil or mineral wax, as described in column 11, lines 6-7, both of which work to sooth and moisturize skin, as described in column 10, lines 39-43.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to use mineral oil or mineral wax, as taught by Roe (-588) as the lotion disclosed by Roe (-020).

With respect to claim 3, the chemical additive used by Roe (-588) also can function as a debonder, as it comprises molecules of mineral oil or mineral wax, which comprise fatty portions and alkyl chains, as described in column 10, line 60, through column 11, line 6.

With respect to claims 4, 7, and 8, the chemical additive used by Roe (-588) may be a silicone polymer, as described in column 11, lines 48-62, where R_1 and R_2 may be alkyl radicals, which are cationic and act as a base. The silicone polymer may further comprise an acidic functional group such as a carboxylic acid, as disclosed in column 12, lines 3-6, making the compound amphoteric.

With respect to claim 11, the nit conditioner used by Roe (-588) also can function as a surfactant, as it may be in the form of a fatty acid ester type of mineral wax, as described in column 10, lines 60-66. This structure is anionic.

With respect to 36, the nit conditioner used by Roe (-588) also is a quaternary amine agent, as described in column 11, line 48, to column 12, line 6.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020).

Roe discloses all aspects of the claimed invention but remains silent as to the amount of nit conditioner used. The nit conditioner disclosed by Roe is a lotion, and it is well-known in the art that an increase in the amount of lotion used directly results in an increased benefit to the skin of the user. It would therefore be obvious to one of ordinary skill in the art at the time of invention to include more than 0.1% by mass of nit conditioner in the pouch of Roe.

Claims 12-13 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020) in view of Chambers et al. (5,597,873).

Roe discloses all aspects of the claimed invention with the exception of the AUL value and Centrifuge Retention Capacity value of the free-flowing particles. Roe discloses in column 19, line 39, the free-flowing particles comprise superabsorbent material.

Chambers teaches the use of superabsorbent material having an AUL value of greater than 10 g/g and a Centrifuge Retention Capacity of greater than 1.5 g/g, as described in column 4, lines 43-55. The superabsorbent material having these characteristics exhibits improved dryness and leak prevention, as disclosed in column 4, lines 53-55.

It would therefore be obvious to one of ordinary skill in the art at the time of invention for the free-flowing particles of Roe to have an AUL value of greater than 10 g/g and a Centrifuge Retention Capacity of greater than 1.5 g/g, as taught by Chambers, to provide improved dryness and leak prevention.

Claims 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020) in view of Bernardin (5,009,650).

Roe discloses all aspects of the claimed invention with the exception of nits comprising 50% eucalyptus fibers, and free-flowing particles comprising a hardwood. Roe discloses the use of cellulosic fibers as the nits or free-flowing particles 172, as described in column 19, lines 37-38, but remains silent as to the type of plant material from which the fibers are take.

Bernardin discloses an absorbent article, as shown in figure 1, comprising a layer of 50% hardwood eucalyptus fibers and 50% softwood fibers, as described in column 11, lines 25-29. The addition of 50% hardwood eucalyptus fibers to the layer significantly improve the wicking ability of the layer, as described in column 11, lines 43-50.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the nits and free-flowing particles of Roe from 50% eucalyptus fibers to improve the wicking ability of the article, as taught by Bernardin.

Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020) in view of Bewick-Sonntag et al. (5,762,641).

Roe discloses all aspects of the claimed invention but remains silent as to the size of the pouch 152. Bewick-Sonntag discloses a suitable width for the crotch region of a diaper as being 10.2 cm, as described in column 11, lines 15-18. Given this width for the crotch region of the diaper disclosed by Roe in figure 5, the pouch 152 measures about 4 cm in width and about 11 cm in length. The diaper dimensions disclosed by Bewick-Sonntag result in a diaper of a size that is comfortable for a baby weighing 9-17 kg, as described in column 11, lines 15-18. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Roe with the dimensions of Bewick-Sonntag to create a diaper of a size comfortable for an infant.

With respect to claim 20, it would have been an obvious matter of design choice to make the pouch 3 cm wide rather than 5 cm wide, since the applicant has not

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disclosed that the width of the pouch being 3 cm wide solves any stated problem or serves any particular purpose. It appears the invention would function equally well with a pouch having a width of 5 cm as a pouch having a width of 3 cm.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (6,156,020).

Roe discloses all aspects of the claimed invention but remains silent as to the amount of chemical additive used. The chemical additive disclosed by Roe is a hydrophobic lotion, and it is well-known in the art that an increase in the amount of lotion used directly results in an increased benefit to the skin of the user. It would therefore be obvious to one of ordinary skill in the art at the time of invention to include more than 0.02% by mass of nit conditioner in the pouch of Roe.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 30 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 39 of prior U.S. Patent No. 6,667,424. This is a double patenting rejection.

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 35 of U.S. Patent No. 6,667,424. Although the conflicting claims are not identical, they are not patentably distinct from each other because every limitation of the instant claims is recited in the patented claim.

Claims 29, 40, and 60-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18, 20, and 34 of U.S. Patent No. 6,667,424. Although the conflicting claims are not identical, they are not patentably distinct from each other because every limitation of the instant claims is recited in the patented claim.

Claims 41, 43-49, and 51-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 39-46 and 48-56 of U.S. Patent No. 6,667,424. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims further disclose a

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wicking barrier. Wicking layers are well-known in the art to provide improved fluid handling to an absorbent article. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of the present invention with a wicking barrier.

Claim 42 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,667,424 in view of U.S. Patent 5,597,873. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims further disclose a wicking barrier. Wicking layers are well-known in the art to provide improved fluid handling to an absorbent article. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of the present invention with a wicking barrier.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CMA
cla
March 17, 2006

IATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

